

WC 07-152

BINGHAM

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FCC/MELLON JUL 23 2007

Jean L. Kiddoo  
Danielle C. Burt  
Phone: (202) 373-6000  
Fax: (202) 373-6001

July 23, 2007

Via Courier

Marlene H. Dortch, Secretary  
Federal Communications Commission  
Wireline Competition Bureau – CPD – 214 Appls.  
P.O. Box 358145  
Pittsburgh, PA 15251-5145

**Re: In the Matter of the Joint Application of NEON Optica, Inc. ("Transferor") and RCN Corporation ("Transferee") For Approval of the Grant of Authority Pursuant to Section 214 of the Communications Act of 1934, as amended, for Approval of a Transfer of Control**

Dear Ms. Dortch:

On behalf of NEON Optica, Inc. ("Transferor" or "NEON") and RCN Corporation ("Transferee" or "RCN"), enclosed please find an original and six (6) copies of an application for approval to transfer control of NEON to RCN.

Also enclosed is a completed Fee Remittance Form 159 containing a valid credit card number and expiration date for payment, in the amount of \$965.00, to the Federal Communications Commission, which satisfies the filing fee required for this Combined Application under line 2.b of Section 1.1105 of the Commission's Rules.

Please date-stamp the enclosed extra copy of this filing and return it in the envelope provided. Please direct any questions regarding this filing to the undersigned.

Respectfully submitted,

  
Jean L. Kiddoo  
Danielle C. Burt

Boston  
Hartford  
Hong Kong  
London  
Los Angeles  
New York  
Orange County  
San Francisco  
Santa Monica  
Silicon Valley  
Tokyo  
Walnut Creek  
Washington

Bingham McCutchen LLP  
2020 K Street NW  
Washington, DC

READ INSTRUCTIONS CAREFULLY  
BEFORE PROCEEDING

FEDERAL COMMUNICATIONS COMMISSION  
REMITTANCE ADVICE

Approved by OMB  
3060-0589  
Page 1 of 2

(1) LOCKBOX # 358145		SPECIAL USE ONLY	
		FCC USE ONLY	
SECTION A - PAYER INFORMATION			
(2) PAYER NAME (if paying by credit card enter name exactly as it appears on the card) Bingham McCutchen LLP		(3) TOTAL AMOUNT PAID (U.S. Dollars and cents) \$965.00	
(4) STREET ADDRESS LINE NO. 1 c/o Danielle Burt			
(5) STREET ADDRESS LINE NO. 2 2020 K Street NW, 10th Floor			
(6) CITY Washington		(7) STATE DC	(8) ZIP CODE 20006
(9) DAYTIME TELEPHONE NUMBER (include area code) 202-373-6000		(10) COUNTRY CODE (if not in U.S.A.)	
FCC REGISTRATION NUMBER (FRN) REQUIRED			
(11) PAYER (FRN) 0004353900		(12) FCC USE ONLY	
IF MORE THAN ONE APPLICANT, USE CONTINUATION SHEETS (FORM 159-C) COMPLETE SECTION BELOW FOR EACH SERVICE, IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEET			
(13) APPLICANT NAME RCN Corporation			
(14) STREET ADDRESS LINE NO. 1 196 Van Buren Street			
(15) STREET ADDRESS LINE NO. 2 Suite 300			
(16) CITY Herndon		(17) STATE VA	(18) ZIP CODE 20170
(19) DAYTIME TELEPHONE NUMBER (include area code) 610-438-0119		(20) COUNTRY CODE (if not in U.S.A.)	
FCC REGISTRATION NUMBER (FRN) REQUIRED			
(21) APPLICANT (FRN) 0011432986		(22) FCC USE ONLY	
COMPLETE SECTION C FOR EACH SERVICE, IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEET			
(23A) CALL SIGN/OTHER ID	(24A) PAYMENT TYPE CODE CUT	(25A) QUANTITY 1	
(26A) FEE DUE FOR (PTC) \$965.00	(27A) TOTAL FEE \$965.00	FCC USE ONLY	
(28A) FCC CODE 1		(29A) FCC CODE 2	
(23B) CALL SIGN/OTHER ID	(24B) PAYMENT TYPE CODE	(25B) QUANTITY	
(26B) FEE DUE FOR (PTC)	(27B) TOTAL FEE	FCC USE ONLY	
(28B) FCC CODE 1		(29B) FCC CODE 2	
SECTION D - CERTIFICATION			
CERTIFICATION STATEMENT I, M. Renee Britt, certify under penalty of perjury that the foregoing and supporting information is true and correct to the best of my knowledge, information and belief.			
SIGNATURE <u>M. Renee Britt</u>		DATE <u>7/23/2007</u>	

FEDERAL COMMUNICATIONS COMMISSION  
REMITTANCE ADVICE (CONTINUATION SHEET)Page No 2 of 2

SPECIAL USE

FCC ONLY

USE THIS SECTION ONLY FOR EACH ADDITIONAL APPLICANT  
SECTION BB - ADDITIONAL APPLICANT INFORMATION

(13) APPLICANT NAME

NEON Optica, Inc.

(14) STREET ADDRESS LINE NO. 1

2200 West Park Drive

(15) STREET ADDRESS LINE NO. 2

(16) CITY

Westborough

(17) STATE

MA

(18) ZIP CODE

01581

(19) DAYTIME TELEPHONE NUMBER (include area code)

508-621-1727

(20) COUNTRY CODE (if not in U.S.A.)

## FCC REGISTRATION NUMBER (FRN) REQUIRED

(21) APPLICANT (FRN)

0005052741

(22) FCC USE ONLY

## COMPLETE SECTION C FOR EACH SERVICE, IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEET

(23A) CALL SIGN/OTHER ID

(24A) PAYMENT TYPE CODE

(25A) QUANTITY

(26A) FEE DUE FOR (PTC)

(27A) TOTAL FEE

FCC USE ONLY

(28A) FCC CODE 1

(29A) FCC CODE 2

(23B) CALL SIGN/OTHER ID

(24B) PAYMENT TYPE CODE

(25B) QUANTITY

(26B) FEE DUE FOR (PTC)

(27B) TOTAL FEE

FCC USE ONLY

(28B) FCC CODE 1

(29B) FCC CODE 2

(23C) CALL SIGN/OTHER ID

(24C) PAYMENT TYPE CODE

(25C) QUANTITY

(26C) FEE DUE FOR (PTC)

(27C) TOTAL FEE

FCC USE ONLY

(28C) FCC CODE 1

(29C) FCC CODE 2

(23D) CALL SIGN/OTHER ID

(24D) PAYMENT TYPE CODE

(25D) QUANTITY

(26D) FEE DUE FOR (PTC)

(27D) TOTAL FEE

FCC USE ONLY

(28D) FCC CODE 1

(29D) FCC CODE 2

(23E) CALL SIGN/OTHER ID

(24E) PAYMENT TYPE CODE

(25E) QUANTITY

(26E) FEE DUE FOR (PTC)

(27E) TOTAL FEE

FCC USE ONLY

(28E) FCC CODE 1

(29E) FCC CODE 2

(23F) CALL SIGN/OTHER ID

(24F) PAYMENT TYPE CODE

(25F) QUANTITY

(26F) FEE DUE FOR (PTC)

(27F) TOTAL FEE

FCC USE ONLY

(28F) FCC CODE 1

(29F) FCC CODE 2

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

\_\_\_\_\_  
In the Matter of the Application of )  
)  
)

**NEON Optica, Inc.** )

Transferor )

and )

**RCN Corporation** )

Transferee )  
)  
)

For Grant of Authority Pursuant to )  
Section 214 of the Communications Act of 1934, )  
as amended, and Section 63.04 of the )  
Commission's Rules to Complete a )  
Transfer of Control of Authorized )  
Domestic Section 214 Carriers )  
\_\_\_\_\_ )

WC Docket No. 07-\_\_\_\_\_

**APPLICATION**

**I. INTRODUCTION**

**A. Summary of Transaction**

RCN Corporation ("RCN") and NEON Optica, Inc. ("NEON") (collectively, "Applicants"), through undersigned counsel and pursuant to Section 214 of the Communications Act, as amended, 47 U.S.C. § 214, and Section 63.04 of the Commission's Rules, 47 C.F.R. § 63.04, hereby respectfully request Federal Communications Commission ("Commission") approval to consummate a transaction whereby RCN will acquire control of NEON, a competitive carrier that holds authority from the Commission to provide interstate telecommunications services.<sup>1</sup> Although the proposed transaction will result in a change in the

<sup>1</sup> NEON provides domestic interstate telecommunications service pursuant to the blanket authorization granted under Section 63.01 of the Commission's rules. 47 C.F.R. § 63.01. There is no file number associated with NEON's domestic authorization because it has not previously submitted any transfer of control application to the Commission. NEON does not hold any international Section 214 authorization and does not provide international common carrier services.

ultimate ownership of NEON, no transfer of certificates, assets or customers will occur as a consequence of the proposed transaction. NEON will continue to provide service to its existing customers under the same rates, terms and conditions. Accordingly, this transaction will be virtually transparent to the customers of NEON.

**B. Request for Streamlined Processing**

Applicants respectfully submit that this Application is eligible for streamlined processing pursuant to Section 63.03 of the Commission's Rules, 47 C.F.R. § 63.03. This Application is eligible for streamlined processing pursuant to Section 63.03(b)(2)(i) because, immediately following the transactions, (1) Applicants and their affiliates, as defined in Section 3(1) of the Communications Act ("Affiliates") combined will hold less than a ten percent (10%) share of the interstate, interexchange market; (2) Applicants and their Affiliates will provide local exchange service only in areas served by dominant local exchange carriers (none of which is a party to the proposed transactions) and; (3) none of the Applicants or their Affiliates is dominant with respect to any service.

In support of this Application, Applicants provide the following information:

**II. DESCRIPTION OF THE APPLICANTS**

**A. RCN Corporation ("Transferee")**

RCN is a publicly traded Delaware corporation with its principal offices located at 196 Van Buren Street, Suite 300, Herndon, VA 20170. RCN is one of the largest facilities-based competitive providers of bundled phone, cable and high speed Internet services delivered over its own fiber-optic local network to consumers in the most densely populated markets in the U.S. RCN has subsidiaries<sup>2</sup> authorized to provide telecommunications services in Connecticut,

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<sup>2</sup> RCN's subsidiaries are: RCN Telecom Services, Inc., RCN New York Communications, LLC, RCN Telecom Services of Washington, D.C., Inc., RCN Telecom Services of Massachusetts, Inc., RCN Telecom

Delaware, District of Columbia, Illinois, Maine, Maryland, Massachusetts, New Jersey, New York, Pennsylvania, Rhode Island, Vermont and Virginia.

**B. NEON Optica, Inc. ("Transferor")**

NEON is a Delaware corporation with its principal offices located at 2200 West Park Drive, Westborough, MA 01581. NEON is a wholly owned subsidiary of NEON Communications, Inc., which in turn is a wholly owned subsidiary of NEON Communications Group, Inc. ("NEON Group"), a publicly-traded Delaware corporation. NEON is a facilities-based communications provider, supplying high bandwidth fiber optic capacity and comprehensive end-to-end telecom services to communications companies and enterprise customers on an intercity, regional, and metro network in the 12-state Northeast and mid-Atlantic region, with 4,800 route miles and over 230,000 fiber miles from Maine to Virginia. NEON's affiliates, which include NEON Connect, Inc., NorthEast Optic Network of Connecticut, Inc., NorthEast Optic of New York, Inc. and NEON Virginia Connect, LLC, are authorized to provide intrastate telecommunications services in 12 states and have applied for an intrastate certificate in Virginia.

**III. DESCRIPTION OF THE TRANSACTION**

RCN and NEON Group entered into a stock purchase agreement ("Agreement") on June 24, 2007 for RCN to acquire the stock of NEON Group. Under the Agreement, the proposed transaction will be accomplished by a merger between NEON Group and Raven Acquisition Corporation ("Raven"), a subsidiary of RCN created specifically for the purposes of this transaction. NEON Group will merge into Raven, with NEON Group surviving. As a result, RCN will indirectly control NEON. Applicants therefore request authority for the transfer of

control of NEON. For the Commission's convenience, pre- and post-transaction illustrative charts are provided as Exhibit A.

Immediately following the consummation of the proposed transaction, NEON will continue to offer service with no change in the rates or terms and conditions of service. Therefore, the transfer of control of NEON will be seamless and transparent to consumers.

#### **IV. PUBLIC INTEREST STATEMENT**

Applicants submit that the transactions described herein will serve the public interest. In particular, the proposed acquisition will enable NEON to obtain access to additional financial and operational resources from its new parent company, which has more than 400,000 customers and \$600 million in annual revenue. These additional resources will allow NEON to strengthen its competitive position to the benefit of consumers and the telecommunications marketplace. Further, the combination of NEON's existing expertise in serving communications companies and enterprise customers with RCN's extensive fiber-optic network will increase both companies' abilities to serve these important customers. Joining the complementary operations of RCN and NEON also will make both companies' networks more robust, which will benefit customers by increasing their ability to obtain route diversity.

In addition, the transaction will be conducted in a manner that will be virtually transparent to customers of NEON. The transfer of ultimate control of NEON will not result in a change of carrier for customers or any transfer of authorizations. Following consummation of the proposed transaction, NEON will continue to provide high-quality communications services to its customers without interruption and without change in rates, terms or conditions. Applicants emphasize that the proposed transfer of control will be seamless and transparent to

Jean L. Kiddoo  
Danielle C. Burt  
Bingham McCutchen LLP  
2020 K Street, NW  
Washington, DC 20006  
Tel: (202) 373-6000  
Fax: (202) 373-6001



Email: jean.kiddoo@bingham.com  
danielle.burt@bingham.com

With copies to:

Joseph Kahl  
Sr. Director, Regulatory and External Affairs  
RCN Corporation  
196 Van Buren Street, Suite 300  
Herndon, VA 20170  
Tel: (610) 438-0119  
Fax: (703) 434-8184  
Email: joe.kahl@rcn.net

For NEON:

Douglas A. Van Winkle  
Assistant General Counsel  
NEON Communications Group, Inc.  
2200 West Park Drive  
Westborough, MA 01581  
Tel: (508) 621-1727  
Fax: (508) 616-7895  
Email: dvanwinkle@neoninc.com

and

J.G. Harrington  
Dow Lohnes PLLC  
1200 New Hampshire Ave., NW  
Suite 800  
Washington, DC 20036  
Tel: (202) 776-2818  
Fax: (202) 776-2222  
Email: jharrington@dowlohn.com

**(a)(4) Ownership Information:**

- (1) The following entities own or control ten percent (10%) or more of the equity of **NEON Optica, Inc.:**

Name:	NEON Communications, Inc.
Address:	2200 West Park Drive Westborough, MA 01581
Citizenship:	U.S.
Percentage Owned:	100%
Principal Business:	Holding Company

- (2) The following entities own or control ten percent (10%) or more of the equity of **NEON Communications, Inc.:**

Name: NEON Communications Group, Inc.  
Address: 2200 West Park Drive  
Westborough, MA 01581  
Citizenship: U.S.  
Percentage Owned: 100%  
Principal Business: Holding Company

- (3) The following entity/entities own or control ten percent (10%) or more of the equity of **NEON Communications Group, Inc.:**

Name: LC Capital Master Fund Ltd.  
Address: Lampe Conway & Co. LLC  
730 Fifth Avenue, Suite 1002  
New York, NY 10019  
Citizenship: U.S.  
Percentage Owned: 11.46%  
Principal Business: Investment Management

- (4) The following entities will own or control ten percent (10%) or more of the equity of **NEON Communications Group, Inc.** following consummation of the proposed transaction:

Name: RCN Corporation.  
Address: 196 Van Buren Street, Suite 300  
Herndon, VA 20170  
Citizenship: U.S.  
Percentage Owned: 100%  
Principal Business: Holding Company

- (5) No other entity holds a ten percent (10%) or greater direct or indirect interest in RCN.

Other than the foregoing, following the transition, no other person or entity will directly or indirectly own ten percent (10%) or more of the equity of Applicants.

- (a)(5) Applicants certify that they are not subject to denial of federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1998. *See* 21 U.S.C. § 853a. *See also* 47 C.F.R. §§ 1.2001-1.2003.

- (a)(6) A description of the proposed Transaction is set forth in **Section III** above.

- (a)(7) NEON Optica, Inc.'s affiliates are authorized to provide intrastate telecommunications services in Connecticut, Delaware, District of Columbia, Maine, Massachusetts, Maryland, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, and Vermont and an intrastate certificate has been

applied for in Virginia. In these states, NEON's affiliates are authorized to provide competitive telecommunications services. All of the services provided by NEON are competitive in nature and neither NEON nor any affiliated company holds a dominant position in any market.


RCN Corporation, through its affiliates, is authorized to provide local and long distance telecommunications services in Connecticut, Delaware, District of Columbia, Illinois, Maine, Maryland, Massachusetts, New Jersey, New York, Pennsylvania, Rhode Island, Vermont and Virginia. In these states, RCN is authorized to provide competitive telecommunications services. All of the services provided by RCN are competitive in nature and neither RCN nor any affiliated company holds a dominant position in any market.

- (a)(8) Applicants respectfully submit that this Application is eligible for streamlined processing pursuant to Sections 63.03 of the Commission's Rules, 47 C.F.R. §63.03. In particular, with respect to domestic authority, this Application is eligible for streamlined processing pursuant to Section 63.03(b)(2)(i) because, immediately following the transaction, (1) Applicants and their affiliates (as defined in Section 3(1) of the Communications Act – ("Affiliates") combined will hold less than a ten percent (10%) share of the interstate, interexchange market; (2) Applicants and their Affiliates will provide local exchange service only in areas served by dominant local exchange carriers (none of which is a party to the proposed transaction) and; (3) none of the Applicants or their Affiliates is dominant with respect to any service.
- (a)(9) No other applications are being filed with the Commission with respect to this transaction.
- (a)(10) Prompt completion of the proposed transaction is critical to ensure that Applicants can obtain the benefits described in the foregoing application. Accordingly, Applicants respectfully request that the Commission approve this Application expeditiously in order to allow Applicants to consummate the proposed transaction as soon as possible.
- (a)(11) Not applicable.
- (a)(12) A statement showing how grant of the application will serve the public interest, convenience and necessity is provided in **Section IV** above.

**VI. CONCLUSION**

For the reasons stated above, Applicants respectfully submit that the public interest, convenience, and necessity would be furthered by a grant of this Application for the above-described transaction. Applicants respectfully request expedited treatment to permit Applicants to complete the transaction as soon as possible.

Respectfully submitted,



Jean L. Kiddoo

Danielle Burt

Bingham McCutchen LLP

2020 K Street, N.W.

Washington, DC 20006

Tel: (202) 373-6000

Fax: (202) 373-6001

Email: jean.kiddoo@bingham.com

danielle.burt@bingham.com

Counsel for RCN Corporation

Joseph Kahl

Sr. Director, Regulatory and External Affairs

RCN Corporation

196 Van Buren Street, Suite 300

Herndon, VA 20170

Tel: (610) 438-0119

Fax: (703) 434-8184

Email: joe.kahl@rcn.net

Douglas A. Van Winkle

Assistant General Counsel

NEON Communications Group, Inc.

2200 West Park Drive

Westborough, MA 01581

Tel: (508) 621-1727

Fax: (508) 616-7895

Email: dvanwinkle@neoninc.com

J.G. Harrington

Dow Lohnes PLLC

1200 New Hampshire Ave., NW

Suite 800

Washington, DC 20036

Tel: (202) 776-2818

Fax: (202) 776-2222

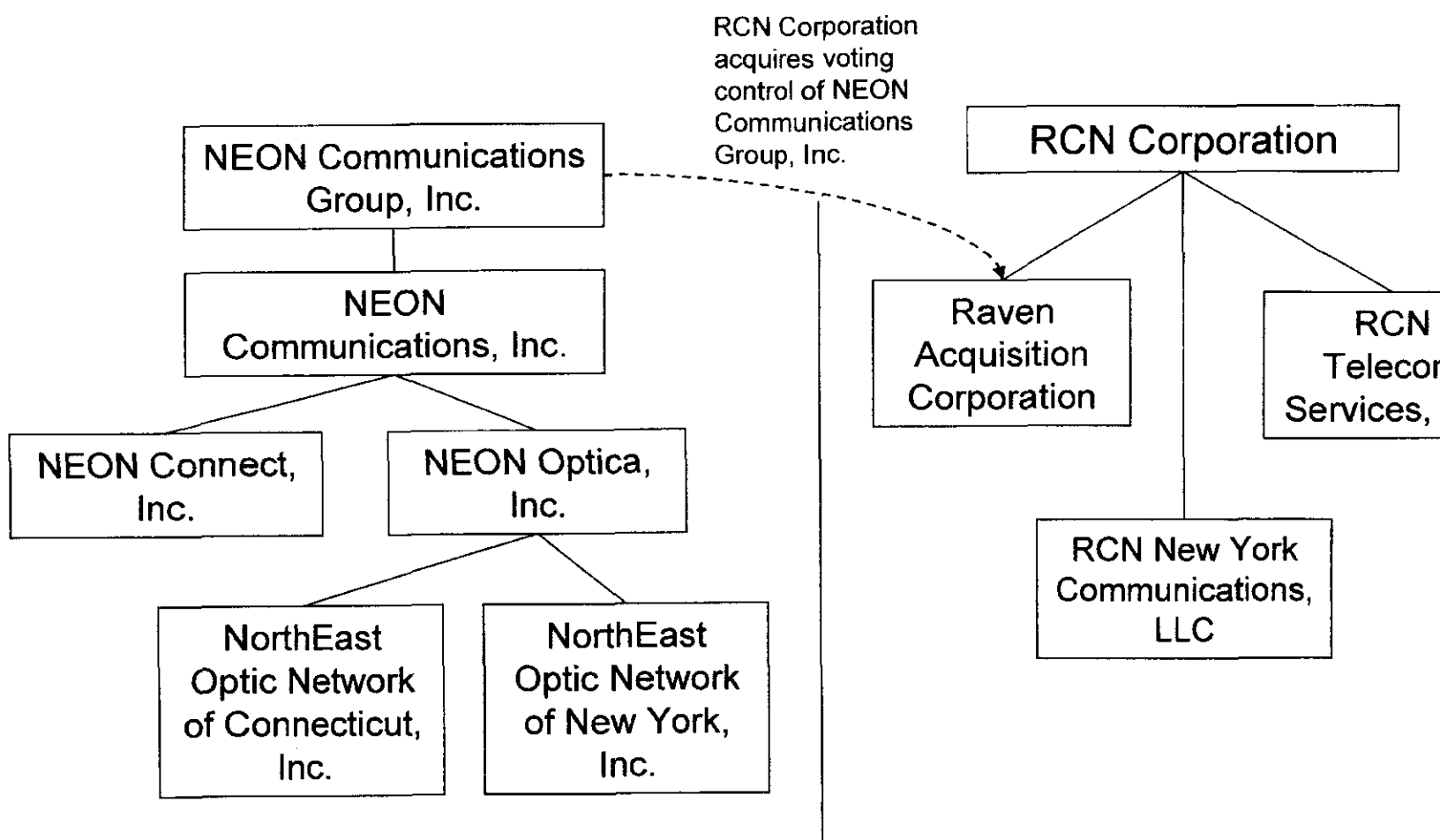
Email: jharrington@dowlohn.com

Dated: July 23, 2007

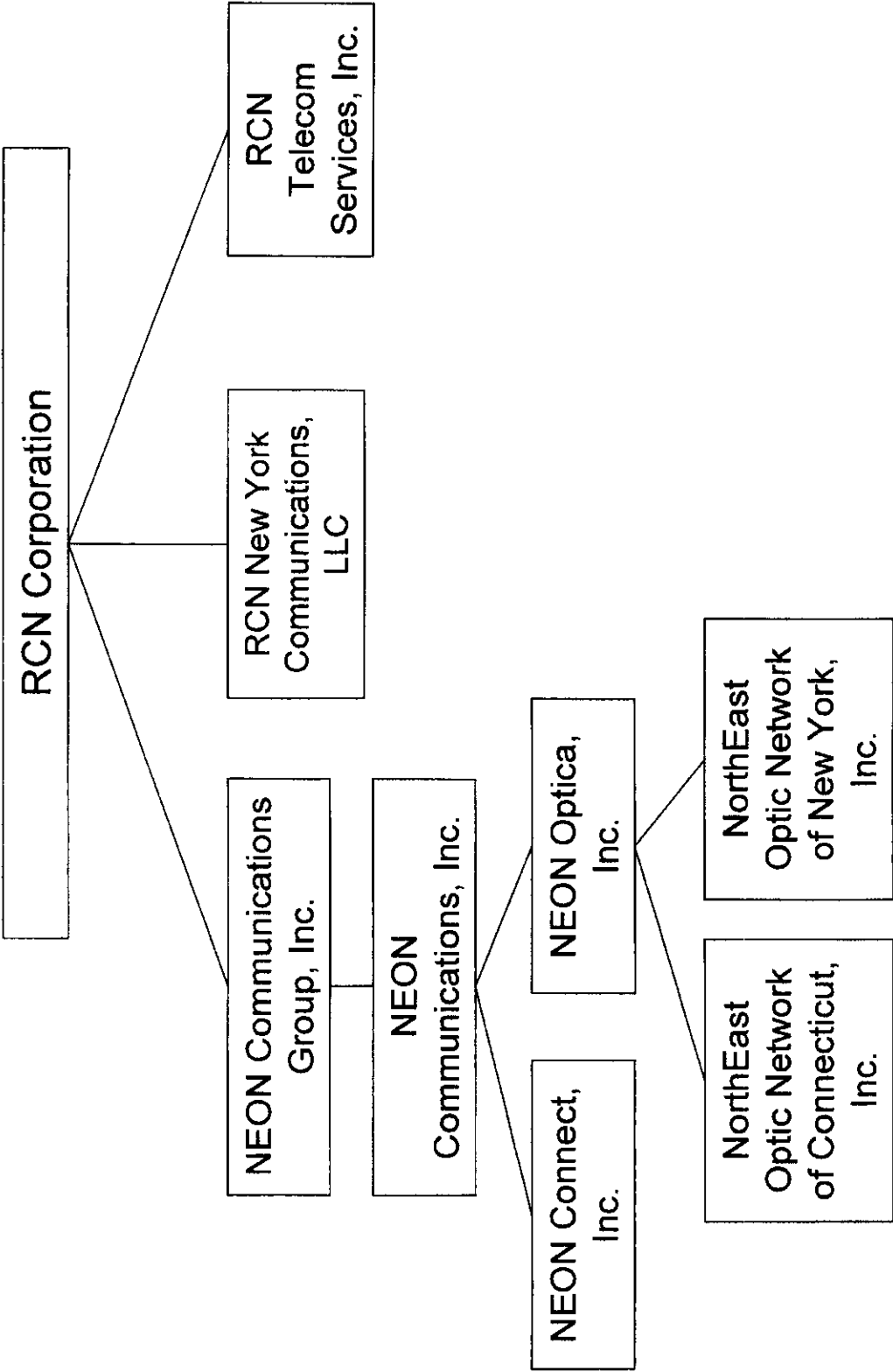
**Exhibit A**

**Pre- and Post-Transaction Illustrative Chart**

## Pre-Transaction Corporate Chart



**Post-Transaction Corporate Chart**



## **CERTIFICATIONS**



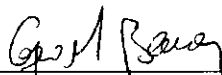
COMMONWEALTH OF MASSACHUSETTS

COUNTY OF WORCESTER

§  
§  
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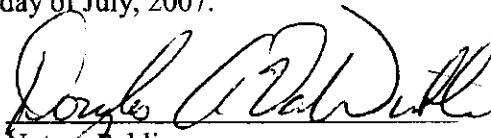
**VERIFICATION**

I, Gene M. Bauer, state that I am the Vice President and Secretary of NEON Connect, Inc.; that I am authorized to make this Verification on behalf of NEON Connect, Inc.; that the foregoing filing was prepared under my direction and supervision; and that the contents with respect to NEON Connect, Inc. are true and correct to the best of my knowledge, information, and belief.



Gene M. Bauer  
Vice President and Secretary  
NEON Connect, Inc.

Sworn and subscribed before me this 11<sup>th</sup> day of July, 2007.



Notary Public

My commission expires Oct 18, 2013

STATE OF VIRGINIA

§

FAIRFAX COUNTY

§

§

**VERIFICATION**

I, Richard Ramlall, state that I am the Senior Vice President Strategic and External Affairs for RCN Corporation; that I am authorized to make this Verification on behalf of RCN Corporation; that the foregoing filing was prepared under my direction and supervision; and that the contents with respect to RCN Corporation are true and correct to the best of my knowledge, information, and belief.



Richard Ramlall  
Senior Vice President Strategic and External Affairs  
RCN Corporation

Sworn and subscribed before me this 10 day of July, 2007.

  
Notary Public

My commission expires 5.31.09